

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Digital Output Protection Technology and Recording Method Certifications</b>	)	<b>MB Docket No. 05-163</b>
	)	
<b>DivX DRM</b>	)	

**RESPONSE TO THE APPLICATION OF DIVXNETWORKS, INC.  
FOR AUTHORIZATION OF DIVX DRM  
BY THE MOTION PICTURE ASSOCIATION OF AMERICA, INC., METRO-  
GOLDWYN-MAYER STUDIOS INC., PARAMOUNT PICTURES CORPORATION,  
SONY PICTURES ENTERTAINMENT INC., TWENTIETH CENTURY FOX FILM  
CORPORATION, UNIVERSAL CITY STUDIOS LLLP, THE WALT DISNEY  
COMPANY, AND WARNER BROS. ENTERTAINMENT INC.**

Jon A. Baumgarten  
Bruce E. Boyden  
Proskauer Rose LLP  
1233 Twentieth Street NW, Suite 800  
Washington, DC 20036  
(202) 416-6800

April 21, 2005

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The Motion Picture Association of America, Inc., Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (collectively, the “MPAA Parties”) hereby file this response to the application of DivXNetworks, Inc. (“DXN”) to have DivX DRM be approved as an Authorized Digital Output Protection Technology and Authorized Recording Method for Marked Content (the “Certification”). The MPAA Parties reiterate their earlier objection that it is premature to approve any technology permitting remote access prior to the adoption of criteria for remote access developed during the Further Notice of Proposed Rulemaking.<sup>1</sup> There are other important issues, identified below, that need to be addressed as well prior to a Commission decision on approval of DXN. DivX DRM is, however, a promising technology that protects digital

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<sup>1</sup> Report and Order and Further Notice of Proposed Rulemaking, *Digital Broadcast Content Protection*, MB Docket No. 02-230 (rel. Nov. 4, 2003).

broadcast television better than the technologies permitting remote access in the forms that the Commission has approved thus far (over the MPAA Parties' continuing objections).

As noted by DXN, *see* Certification at 8, the MPAA Parties have had productive discussions with DXN regarding the content protection functionality of the DivX DRM technology, and the MPAA Parties appreciate the progress that is reflected in the Certification. DXN has provided important information concerning DivX DRM's security, key management, and OEM compliance, and has modified its DivX DRM technology to address the concerns expressed by the MPAA Parties.

DivX DRM includes capabilities for remotely accessing Marked Content over the Internet. As we have previously stated, the MPAA Parties believe that a final set of marketplace criteria should be developed through the FNPRM proceedings *before* any remote access capable technology is approved.<sup>2</sup> The MPAA Parties believe that there are a number of technological, policy, and legal questions that must be addressed before enabling the remote access of Broadcast Flag Marked Content. Nevertheless, the Commission has concluded otherwise. The MPAA Parties' Petition for Reconsideration on this issue is still pending. While we continue to object to any approval of technologies containing remote access capability at this time, we note that the collective set of functional controls found in the DivX DRM Certification, which has been the subject of meaningful discussions with the MPAA, is superior in its prevention of indiscriminate redistribution through remote access to the TiVoGuard and SmartRight content protection technology certifications as filed and already approved over the MPAA Parties' objections.

Setting aside the issue of remote access, there are other important issues that must still be addressed. First, although DXN has identified the procedures for registering devices to a user

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<sup>2</sup> *See* Petition for Partial Reconsideration and Clarification by the MPAA, et al., MB Docket Nos. 04-55 *et al.*, at 2-3 (filed Sept. 13, 2004).

account, we believe that such technologies must incorporate an effective identity-based device registration process to ensure that all devices are registered to the same user account. For example, the establishment of a user account verified through credit card information (e.g. billing address) or other point of sale information could achieve this goal.

Second, although DXN has provided a checklist for its OEMs in building authorized DivX DRM recording devices, and while the MPAA Parties generally support licensor certifications of compliance and robustness and support DXN's proposed process in particular, DXN's form adopter agreement must bind adopters contractually to a certain set of compliance and robustness rules so that the adopters' obligations to remain compliant will continue after DXN's initial testing and certification, including but not limited to maintaining compliance via web or firmware updates from DXN.<sup>3</sup> Similarly, the form adopter agreement attached to the Certification does not contain any provisions for enforcement of such compliance and robustness rules, such as third-party beneficiary rights on the part of content owners.

Third, although DXN has indicated its willingness to resolve the issue, the Certification does not yet contain a Content Participant Agreement ("Agreement"). The Agreement must contain an obligation on the part of DXN to investigate compliance or robustness breaches in DivX-certified devices when notified by content participants, and to de-certify such devices if warranted. The Agreement must also indicate the means and terms by which content owners could request device key revocation or invoke change management procedures and must afford content owners the right to enforce adopter compliance and robustness obligations as third party beneficiaries if and when they are breached by adopters. Although the Commission has

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<sup>3</sup> DXN should also clarify in its reply comments that Exhibit 2 to its certification will be attached to its OEM Consumer Electronics License Agreement as "Exhibit X."

concluded that third-party enforcement rights are not necessary in all instances,<sup>4</sup> the absence of a content participant license or enforcement terms is a factor that should be considered prior to approval of any certification.

Finally, as the MPAA Parties requested previously,<sup>5</sup> DXN should clarify in its reply that there are no obligations that would impact content owners, broadcasters, consumers, or others described below by use of its technology.

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<sup>4</sup> Order, *Digital Output Protection Technology and Recording Method Certifications*, MB Docket Nos. 04-55, *et al.*, FCC 04-193, ¶ 93 (rel. Aug. 12, 2004).

<sup>5</sup> See Opposition to the Application of DivXNetworks, Inc. for Authorization of DivX DRM by the MPAA, *et al.*, MB Docket No. 04-298, at 7-8 (filed Sept. 13, 2004).

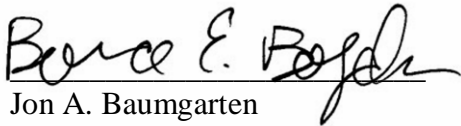
## CONCLUSION

We look forward to DXN's satisfactory responses on the above issues, and although we continue to object to approval of any technology permitting remote access as premature, we believe DivX DRM is a promising technology that is superior in protecting digital broadcast content under the Broadcast Flag regulation to other technologies already approved for remote access by the Commission.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.  
METRO-GOLDWYN-MAYER STUDIOS INC.  
PARAMOUNT PICTURES CORPORATION  
SONY PICTURES ENTERTAINMENT INC.  
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By:



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Bruce E. Boyden  
Proskauer Rose LLP  
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Washington, DC 20036  
(202) 416-6800

*Counsel for the Commenting Parties*